IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Criminal Application No.203 of 2007

Smt. Hansaben Vasant Thakkar Applicant

Vs.

Mr. Koshor Monji Thacker & ors. Respondents

Mr.Prakash Naik for applicant.

Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 31, 2007.

P.C.

. Heard Mr.Naik, the learned counsel for the applicant who is one of the complainants in C.C. No.247/SS/2005. The said complaint was filed by the present applicant and two of her brothers i.e. Bharat Ragavji Thakkar and Arvind Raghoji Thakkar for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. The said complaint has been allowed by the learned Metropolitan Magistrate, 31st Court, Vikhroli, Mumbai as per his judgment and order dated 15th November 2006 and accused nos.3 and 4 have been acquitted from

the offence. The operative part of the order reads as under :

> (a) Accused nos.3 and 4 are acquitted of the offence under Section 138 of the Negotiable Instruments Act and their bal bonds stand cancelled and their cash bail amount, if not forfeited, be returned to them. And
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> (b) Accused no.1 firm is convicted under Section 138 of the Negotiable Instruments Act and is sentenced to pay fine of Rs.9,00,000/- equal to the cheque amount. This amount is voluntarily deposited by accused nos.3 and 4 for themselves and on behalf of the firm. This amount shall be distributed amongst the legal heirs of original complainant proportionately on production of the Legal Heirs Certificate by them and by furnishing their individual affidavit in that behalf."

. Mr.Naik, the learned counsel for the applicant states that the dishonoured cheque amount itself was Rs.9 lakhs and some further compensation ought to have been granted by the trial Court so as to ensure

that interest on the amount of Rs.9 lakhs was recovered from the accused.

. These arguments do not impress me basically because in the operative part of the order itself it is very clearly sated that the amount was voluntarily deposited by accused nos.3 and 4 for themselves and on behalf of the firm. It is not necessary that in every case either cost or compensation is granted so as to cover the interest amount and the expenditure on resources. As the accused nos.3 and 4 themselves voluntarily deposited the amount under recovery and taking that into consideration, no separate order is passed so as to recover interest on the amount of Rs.9,00,000/-.

. By this application special leave to appeal is sought against accused nos.3 and 4 who have voluntarily deposited the cheque amount on behalf of the accused no.1 company. Accused no.2 had died during the pendency of the complaint. The only grievance of the applicant is about interest and the other two complainants have not joined her. The order passed by the trial Court is in the nature of an order of compounding under Section 147 of the N.I.

Act.

. Hence there is no case to grant special leave to appeal and the application is rejected.

(B.H.MARL